DAMAGES—STATUS OF DEAD BODIES—MUTILATION—MENTAL SUFFERING.—The infant son of the plaintiff died in Oklahoma. The plaintiff, desirous of burying him in the family cemetery in Indiana, purchased tickets from the former to the latter state over the line of the defendant's railroad. The agents of the defendant, in attempting to place the casket in the car, handled it in such a negligent manner that it fell to the ground, in consequence of which, both the outer box and casket were broken and the corpse within was badly mutilated and disfigured. In an action against the railroad company for damages, *Held,* that plaintiff could recover for the injury to the casket, but not for the mutilation of the deceased. *Long et al.* v. *Chicago, R. I. & P. Ry. Co.* (1906), — Okla. —, 86 Pac. Rep. 289.

At common law the bodies of deceased persons are not recognized as property. Formerly they were considered to be in the charge of the state and ecclesiastical courts. 61 Am. St. Rep. 277 note, 82 Am. Dec. 513; *Reg.* v. *Sharpe,* Dea. & Bell. C. C. 160. Although no right of property is recognized as such, still a right of possession for burial purposes is recognized. *Reg.* v. *Fox,* 2 Q. B. 246; *Williams* v. *Williams,* 20 Ch. Div. 659. In this country some of the courts are still the staunch supporters of the common law. *Weld* v. *Walker et al.,* 130 Mass. 422. Another takes the view that bodies of deceased persons are property and may be disposed of accordingly. *Bogert* v. *City of Indianapolis,* 13 Ind. 134. Others more conservative than the former take the middle ground and hold that dead bodies are quasi property. *Pierce* v. *Proprietors of Swan Point Cemetery,* 10 R. I. 227, 237. Generally, the courts that support the common law rule hold that there can be no civil action for the mutilation of the body of a deceased person. This, however, is not the universal rule. Many of the state courts hold that even though the body is not property, still there is such a right existing in the next of kin that an action may be maintained against one who unlawfully mutilates the dead body of a relative. *Foley* v. *Phelps,* 37 N. Y. Supp. 471; *Hackett* v. *Hackett,* 18 R. I. 155; *Larson* v. *Chase,* 47 Minn. 307; *Burney* v. *Children's Hospital in Boston,* 169 Mass. 67, 47 N. E. 401; *Koerber* v. *Patek,* 123 Wis. 453; 102 N. W. Rep. 40. A recovery in cases of this kind is not altogether dependent upon the question of property in dead bodies. It is also dependent upon the other question whether or not a recovery can be had for mental suffering and anxiety wholly unconnected with physical injury. The majority of the states that have adjudicated upon this question take the negative side. Many, however, have taken a bold stand for the affirmative as exemplified in the "Telegraph Cases," *Mentzer* v. *W. U. Tel. Co.,* 93 Ia. 752; 57 Am. St. Rep. 294; *Relle* v. *W. U. Tel Co.,* 55 Tex. 308; *Wadswoth* v. *W. U. Tel. Co.,* 86 Tenn. 695; 8 S. W. Rep. 574; *Reese* v. *W. U. Tel. Co.,* 123 Ind. 294; *W. U. Tel. Co.* v. *Henderson,* 89 Ala. 510; *Chapman* v. *W. U. Tel. Co.,* 90 Ky. 265; *Louisville & Nashville R. R. Co.* v. *Hull,* 113 Ky. 561, 68 S. W. 433. Reason and justice seem to be with the affirmative and against the principal case. Otherwise one to whom the body of a deceased is entrusted could treat it with impunity and even sell it to the highest bidder. If in such a case the law could give no remedy, no right of

action against the wrongdoer, it would be equal to saying that "all the requirements of decency, humanity, morality and Christianity may be disregarded with impunity." *Meagher* v. *Driscoll,* 99 Mass. 281; *Hale* v. *Bonner et al.,* 82 Tex. 33; 17 S. W. 605; 27 Am. St. Rep. 850; *Renihan et al.* v. *Wright et al.,* 125 Ind. 536; 25 N. E. 822; *Wells, Fargo & Co.'s Express* v. Fuller, 13 Tex. Civ. Appeals 610, 35 S. W. 824. If it is contended that mental suffering unaccompanied by physical injury as an element of damages is difficult to ascertain, the answer is that the same difficulty arises in cases of slander, libel, breach of marriage contract, seduction, etc. Other courts contend that the law does not deal with emotions, feelings and those finer qualities of man. Here it may be "answered that the parties themselves have contracted with respect to those very things, which naturally affect the feelings and emotions." *Louisville & Nashville R. R. Co.* v. *Hull,* 113 Ky. 561; 68 S. W. 433.

EASEMENTS—ADVERSE POSSESSION—COLOR OF TITLE.—An abutting owner brought an action against an elevated railroad for injury to his easements of light, air and access. The railroad was constructed in 1879 and entered into possession under the mistaken belief that it owned the easements by virtue of a grant from the City of New York. The road was operated and maintained for more than twenty years, the prescriptive period, in front of plaintiff's premises. In 1900 and 1901 the vice-president of the road petitioned the state board of tax commissioners for a reduction of its franchise taxes, reciting that the company had paid a specified sum for damages to abutting owners and would be required in the future to pay about $8,000,000 more to obtain the unobstructed right to exercise its franchise. *Held,* that the possession taken by the railroad was open, hostile and exclusive, ripening into a prescriptive right by lapse of time. *Hindley* v. *Manhattan Ry. Co. et al.* (1906), — N. Y. —, 78 N. E. Rep. 276.

In 1882 the law was announced in New York in *Story* v. *N. Y. El. R. R. Co.,* 90 N. Y. 122, that the easements of light, air and access belonged to the abutting owner and not to the city. The defendants entered into possession in the mistaken belief that they owned the easements, but they were nothing more than trespassers, and their action was adverse. An entry under legislative and municipal authority is under apparent authority to appropriate the easements of the abutting owners to the purposes of the entry, and is sufficient for the claim of prescriptive right to rest upon. *Jackson* v. *Smith,* 13 Johns. 406; *Northrop* v. *Wright,* 7 Hill, 476; *Herzog* v. *N. Y. El. R. R. Co.,* 76 Hun 486; *American Bank Note Co.* v. *N. Y. El. R. R. Co.,* 27 N. Y. Supp. 1034, 29 N. E. 302. The decision of the General Term, affirmed by the Appellate Court, giving the plaintiff damages was reversed on exception to the admission of evidence of petitions by the company for a reduction of taxes, and of settlements with other abutting owners. Such petitions were held not to be an assertion by the railroad that it had no defense founded on prescription. It is evident that a settlement with abutting owners could not affect the plaintiff, as it was not connected with the particular lot in question. *White* v. *Manhattan Ry. Co.,* 139 N. Y. 19, 34 N. E. 887.